

22 SEPTEMBER 1947

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Monday, 22 September 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE R. B. PAL, Member
from India, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTPE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 - - -

4 MITSUMASA YONAI, called as a witness
5 on behalf of the defense, resumed the stand and
6 testified through Japanese interpreters as follows:

7 THE PRESIDENT: Mr. Sutton.

8 MR. SUTTON: If it please the Tribunal, we
9 desire to request that the YONAI affidavit be referred
10 to the Language Section. Some question has arisen
11 about the translation of certain paragraphs in the
12 affidavit.

13 THE PRESIDENT: We refer it to Major Moore.
14 Yes, Mr. Sutton.

15 CROSS-EXAMINATION

16 BY MR. SUTTON (Continued):

17 Q Admiral, just before adjournment on Friday,
18 you were testifying concerning a conference between
19 yourself and War Minister HATA. What was the exact
20 date of that conference?

21 A I think it was around the 16th of July.

22 Q I suggest to you that this conference was on
23 12 July, 1940. Does that refresh your recollection?

24 A In my recollection, I have not discussed any
25 big problem with General HATA in June.

1 Q The date which I suggested to you was 12 July,
2 1940. I asked if that was not the date of this con-
3 ference.

4 A What kind of conference are you referring to?

5 Q I am referring to the conference in which you
6 asked HATA if he was aware of the circumstances surround-
7 ing the visit of the Vice-Minister and the Chief of the
8 Military Affairs Bureau to Chief Secretary ISHIWATA,
9 urging mass resignation of your cabinet and his opinion
10 thereon.

11 A At that time I received a report that the
12 Vice-Minister of War did not meet the Chief Secretary
13 of the Cabinet ISHIWATA.

14 Q But, I am asking you if that occurred on
15 12 July, 1940?

16 A I have no positive recollection of the date.

17 Q Did General HATA resign as War Minister on
18 16 July, 1940?

19 A On or about that day he merely announced his
20 desire to resign, but I had not yet accepted his res-
21 ignation.

22 Q On what date did you accept his resignation?

23 A I think it was the 18th.

24 Q I suggest to you that it was July 16th. Are
25 you certain in your recollection that it was the 18th

on which you accepted his resignation?

A That, I am not -- I think it was July 18th.
I am not positive as to dates.

Q Did General HATA, as War Minister, between
12 July, 1940 and the time that he resigned, take any
action indicating that his views were different from
those of the cabinet and that the cabinet should resign?

A No.

Q Did not War Minister HATA on 14 July, 1940,
deliver to you a note setting out his views?

A No, I did not. I did not receive such a note.

Q Did not General HATA, at any time before his
resignation, deliver to you a note?

A I have no clear recollection.

Q I will try to refresh your memory. Did not
the note delivered to you by General HATA some days
prior to his resignation contain the following, or
substantially the following: "The present conditions
are such that we are now facing the greatest transition
phase of world history, and the strengthening of the
domestic organization and the reformation of the foreign
policy have become the most pressing of all our work.
However, the Government is doing nothing, and it seems
that it is idly losing an opportunity which will never
come again. In this way it is even blocking the complete

1 settlement of the Incident. Therefore, at this time,
2 in order to give the people's minds a change, and
3 promote the establishment of the new organization,
4 from a broad point of view, how about deciding to have
5 the cabinet resign"?

6 Did General HATA deliver to you a note of that
7 purport?

8 A I do not think there was anything carrying
9 such a meaning.

10 Q Do you not recall the fact that he did deliver
11 to you a note?

12 A No, I do not recall.

13 Q Were not the contents of this note published
14 in an article in the Tokyo Asahi Shimbun on 17 July,
15 1940, which article was under the head of "Liquidation
16 of YONAI-ARITA's Diplomatic Policy"?

17 MR. LAZARUS: I do not wish to interrupt,
18 Mr. President, but we are running into the same problem
19 we had Friday. The witness has definitely answered
20 he doesn't know, he never received this note. Now,
21 any further talk about the note and trying to get it
22 into the record is merely arguing with the witness. He
23 stated he never received the note.
24
25

1 THE PRESIDENT: This witness' answers indi-
2 cated that he is far from positive that he never re-
3 ceived such a note, or that there was no such conver-
4 sation, whatever it might be. Now, Mr. Sutton is
5 endeavoring to refresh the witness' memory by referring
6 to, what probably was, a leading Tokyo newspaper of the
7 day.

8 Did you say it was the Tokyo Shimbun?

9 MR. SUTTON: Yes. A-s-a-h-i Shimbun.

10 THE PRESIDENT: Then, again, I am reminded
11 by a colleague that KIDO, in his diary, referred to
12 such a note.

13 I am convinced that the whole Court desires
14 that this witness should be pressed on matters like
15 this, about which he should be positive, having been
16 Prime Minister.

17 MR. SUTTON: May the witness be shown a 17
18 July copy of the Tokyo Asahi Shimbun?

19 (Whereupon, a document was handed
20 to the witness.)

21 A At that time, it is said that the Chief of
22 the Military Affairs Bureau made such a statement to
23 the Chief Secretary of the Cabinet, ISHIWATA, but I
24 firmly believe that General HATA was not a person who
25 would say such a thing. My reason for so stating is

1 that General HATA made no -- expressed no opinions to
2 the YONAI Cabinet since its formation, and he has not
3 participated in the -- made any statement of the nature
4 at a Cabinet meeting. This is proof of the fact that
5 he was not opposed to the policies of the YONAI Cab-
6 inet.

7 THE PRESIDENT: That does not seem to be a
8 proper answer after reading what you put before him,
9 if you stated correctly what is now before him in
10 that newspaper article.

11 Are we to understand that the newspaper
12 refers to a note from the accused HATA?

13 BY MR. SUTTON (Continued):

14 Q Will you refer -- do you recognize the article
15 now before you -- do you recognize the paper now before
16 you as the issue of the Tokyo Asahi Shimbun of 17
17 September 1940?

18 A This is the Asahi Shimbun. There is no ques-
19 tion about that.

20 Q And, do you see in there an article on the
21 "Liquidation of the YONAI-ARITA's Diplomatic Policy"?

22 THE PRESIDENT: If it isn't a long one, ask
23 him to read it.

24 A I have not read the whole article, but what-
25 ever the press might write about, still I insist there

1 is no mistake in what I have stated.

2 Q Does not the article contain the language
3 which I quoted to you? Will you please examine the
4 article and see if that exact language is not in the
5 article?

6 A Where is the point in your question?

7 Q The point is --

8 THE PRESIDENT: You need not tell him where
9 the point is. Japanese witnesses are very fond of
10 knowing what the point is.

11 Q Will you please answer the question?

12 MR. LAZARUS: If he didn't understand the
13 point, Mr. President, I suggest that the question be
14 read to him again. That is his privilege, to ask twice.

15 THE PRESIDENT: He is not asked to understand
16 any point. The question is whether he understands the
17 question put to him.

18 A May I have it repeated?

19 BY THE PRESIDENT:

20 Q Is there in that article any reference to a
21 note from HATA to you?

22 A I do not believe that the foreign policies of
23 the YONAI Cabinet was mistaken in any way.

24 Q That is not an answer to my question. Please
25 answer my question. Is there in that article any

reference about a note from HATA to you?

A Inasmuch as I have no recollection whatsoever of ever having received a note from HATA, I am unable to reply to that question.

Q I will give you another opportunity. Is there in that article, which you appear to have read just now, any reference to a note from HATA to you?

A Now, I wonder whereabouts it is written.

(Whereupon, a prosecution counsel indicated to the witness.)

MR. KANZAKI: Mr. President, that edition is a copy of the newspaper -- Mr. President, the copy of the newspaper, which the witness has in his hand, is a reduced edition. The characters are small, so that it is very difficult to read.

THE PRESIDENT: Let him give the explanation. We do not want from counsel matters that the witness is to deal with.

A I can't read this very well. The letters are unclear.

MR. SUTTON: May we have a magnifying glass brought into the courtroom?

THE PRESIDENT: If you have one, let him use it. The Court hasn't any.

BY MR. SUTTON (Continued):

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1 Q Is not the Asahi Shimbun a newspaper with the
2 largest circulation in Japan at the time that your
3 cabinet was in power?

4 A Yes.

5 MR. SUTTON: May it please the Tribunal, we
6 are having brought to the courtroom a magnifying glass.

7 THE PRESIDENT: In the meantime, let Major
8 Moore have a look at that.

9 MR. LAZARUS: As a matter of fact, the pros-
10 ecutor's wisecracks are unnecessary because I know
11 Admiral YONAI can't read without a magnifying glass,
12 Mr. President.

13 THE PRESIDENT: If Admiral YONAI could read
14 without a magnifying glass, after that he could well
15 say that he can't. He has got two props from the bar
16 table which were quite improper -- quite improper --
17 and would lead to strong action in any other court but
18 this. But there are reasons why we should not take
19 drastic action at this stage. He professed the ability
20 to read that print until Dr. KANZAKI spoke. He
21 disclaimed the ability to read without a magnifying
22 glass; he may now, though.

23 Q Now that you have a magnifying glass, will
24 you again examine the article and reply to the question
25 of the President of the Tribunal?

1 A Such a fact as here written I have never
2 heard from HATA nor have I ever received in writing
3 from HATA.

4 THE PRESIDENT: You have not told us yet whether
5 the article refers to a note from HATA, and you will
6 do so before you leave that box or you leave it a
7 discredited man.

8 THE WITNESS: I do not notice it.

9 THE PRESIDENT: It may not be in it.

10 Q Will you begin reading the article at the
11 point therein which is now designated to you, and
12 continue to read?

13 THE PRESIDENT: Mr. Sutton, you had better
14 be sure the reference to the note from HATA is in the
15 article.

16 I understand that the translation of the
17 witness' affidavit is so defective that it should be
18 wholly translated again. It is referred to the
19 Language Section for further translation.

20 MR. SUTTON: May the witness now read at the
21 point that has been indicated to him?

22 THE PRESIDENT: He may.

23 A There couldn't possibly have been such a case.
24 I have never heard it from HATA nor ever received a
25 note from HATA.

1 THE PRESIDENT: That is still not an answer.
2 The Prime Minister is the most stupid witness
3 I have ever listened to.

4 Q Admiral, will you begin to read at the point
5 that was indicated to you in that article and read the
6 two paragraphs which follow?

7 A (There was no response.)

8 Q Does the witness understand that all I have
9 asked him to do is to read aloud in the hearing of the
10 Tribunal the portion of the article which has been
11 pointed out to him?

12 A I understand. I am looking for it.

13 THE PRESIDENT: You have forgotten, Witness,
14 that you cannot read without a magnifying glass.

15 THE WITNESS: No, there are lights in the room
16 now.

17 (Reading) "Next, on the 11th, the Chief of
18 the Military Affairs Bureau called on the chief
19 secretary of the cabinet and amplified the desires of
20 the War Minister, and on the evening of the 14th, War
21 Minister HATA again made a very important recommendation
22 to Premier YONAI in writing. The contents of the said
23 note in writing is as follows:

24 "The present conditions are such that we are
25 now facing the greatest transition phase in the world

1 situation, and the strengthening of the internal
2 structure and the reformation of foreign policy have
3 become the most pressing of all our work. However,
4 the government is doing nothing, and it seems that it
5 is idly losing an opportunity which may never come
6 again. In this way it is even blocking the complete
7 consummation of the China Incident. Therefore, at
8 this time, in order to give the people's minds a change
9 and to promote the establishment of a new structure from
10 a very broad point of view, how about deciding that
11 the cabinet resign?"

1 MR. SUTTON: We offer in evidence the volume
2 of Tokyo Asahi Shimbun containing its publication of
3 17 July 1940.

4 THE PRESIDENT: Admitted on the usual terms.

5 MR. SUTTON: We offer in evidence therefrom
6 the entire article, which is tendered as IPS Document
7 2999-D.

8 CLERK OF THE COURT: The publication entitled
9 Asahi Shimbun containing the issue of July 17, 1940
10 will receive exhibit No. 3199 for identification only,
11 and the excerpt therefrom, being prosecution document
12 No. 2999-D, will receive exhibit No. 3199-A.

13 (Whereupon, the document above re-
14 ferred to was marked prosecution exhibit 3199 for
15 identification, and the excerpt therefrom, being
16 prosecution document No. 2999-D, was marked prose-
17 cution exhibit 3199-A and received in evidence.)

18 MR. SUTTON: I regret that I have at hand
19 presently only four copies. Additional copies will be
20 promptly prepared and distributed to Court and counsel.

21 Q Do you now say, Admiral, that you did not re-
22 ceive any note from General HATA in July prior to his
23 resignation?

24 A Yes, I still insist that I did not receive it.

25 Q Do you recall a conversation with a member of

1 the cabinet secretariat on 3 June 1946 relative to the
2 receipt by you in July, 1940, of a note from General
3 HATA?

4 A Did you say 1946?

5 Q I beg your pardon; June 3, 1947. I said "6"
6 by error.

7 A There was nothing of the kind this year.

8 Q Did you not in that conversation with a mem-
9 ber of the cabinet secretariat on June 3, 1947, say
10 that General HATA delivered to you a note of this pur-
11 port?

12 A No, I didn't say anything of the kind.

13 Q And did you not also say that you returned the
14 note to General HATA on that occasion after you had
15 looked at it?

16 A No recollection of it at all.

17 Q Admiral, had you received a note of the pur-
18 port of the one which you read from the Asahi Shimbun
19 from your War Minister, would it not have indicated
20 that HATA was intending to destroy your cabinet?

21 MR. LAZARUS: I object, Mr. President. The
22 question is pure speculation.

23 THE PRESIDENT: It is hypothetical, but I am
24 not sure that you can't test credit by putting hypo-
25 thetical questions. It depends on the circumstances.

1 However, I don't think it is worth-while pressing.

2 MR. SUTTON: May it please the tribunal, this
3 question is preliminary to the next question that I
4 desire to ask the witness.

5 THE PRESIDENT: Ask it.

6 Answer the question, Witness.

7 THE WITNESS: May I have that last question
8 repeated?

9 (Whereupon, the last question was read
10 by the Japanese court reporter.)

11 No, I deny that. There was nothing of the
12 kind.

13 Q And do you tell the Tribunal that a note of
14 this importance from the War Minister to the Prime
15 Minister, which was published in the leading Tokyo
16 newspaper of that day, with a direct quotation of the
17 note in the newspaper, has never been brought to your
18 attention until today?

19 A That is right, I have never received it.

20 MR. SUTTON: We have no further questions.

21 THE PRESIDENT: Mr. Lazarus.

22 MR. LAZARUS: No redirect, Mr. President.

23 THE PRESIDENT: The witness is released on the
24 usual terms.
25

(Whereupon, the witness was excused.)

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1 THE PRESIDENT: If there are substantial
2 changes in the affidavit, when it is retranslated,
3 he may be recalled.

4 MR. LAZARUS: We next call Foreign Minister
5 ARITA.

6 THE PRESIDENT: Why are you passing over
7 INUMA, Mr. Lazarus? INUMA and SAWADA are being passed
8 over. Can you tell us why?

9 MR. LAZARUS: Yes, Mr. President. We would
10 like to have these two from the same cabinet follow
11 each other, Mr. President. We think the sequence is
12 better that way.

13 - - -

14 H A C H I R O A R I T A, recalled as a witness on
15 behalf of the defense, having been previously
16 sworn, testified through Japanese interpreters
17 as follows:

18 DIRECT EXAMINATION

19 MR. LAZARUS: May the witness be shown docu-
20 ment 2049?

21 (Whereupon, a document was handed
22 to the witness.)

23 BY MR. LAZARUS:

24 Q Is that your affidavit, Mr. Witness?

25 A Yes, it is.

1 MR. LAZARUS: I now offer in evidence de-
2 fense document 2049.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document No.
5 2049 will receive exhibit 3200.

6 (Whereupon, the document above re-
7 ferred to was marked defense exhibit No.
8 3200 and received in evidence.)

9 MR. LAZARUS: There is just one change in
10 the English translation, in the third line from the
11 bottom, middle. "Superior power" is changed to
12 "strong reason."

13 (Reading)

14 "I have held the portfolio of Foreign Minister
15 in four cabinets: HIROTA, April 1936 to February 1937;
16 1st KONOYE, October 1938 to January 1939; HIRANUMA,
17 January 1939 to August 1939; and YONAI, January 1940
18 to July 1940.

19 "The YONAI Cabinet was opposed to the Tri-
20 Partite Pact because we were opposed to any entangle-
21 ments with Germany. Such being the case, the Tri-
22 Partite Pact was never during the life of the YONAI
23 Cabinet put on the agenda for discussion by the Minis-
24 ters of the Cabinet.
25

"General HATA was the War Minister in the YONAI

1 Cabinet and throughout his tenure of office he was in
2 full accord with the policy of the Cabinet and co-
3 operated fully with it. In fact, I know General HATA
4 opposed the Tri-Partite Pact from the days when it
5 first was being discussed in Japan. When I was For-
6 eign Minister in the HIRANUMA Cabinet I had occasion
7 to have an audience with the Emperor. While waiting
8 to be received I met General HATA, who was then Aide-
9 de-Camp to His Majesty. We conversed informally and
10 the subject of the Tri-Partite Pact came up. General
11 HATA stated it appeared the Emperor objected to the
12 proposed pact and that he himself was strongly opposed
13 to it. He made it clear to me that besides his per-
14 sonal opposition to any alliance with the Germans,
15 he also opposed a pact on the grounds that he could see
16 no benefit to Japan in signing a pact which would work
17 against the interests of our country and which would
18 antagonize the Anglo-Saxon countries.

19 "When HATA resigned as War Minister in the
20 YONAI Cabinet I believed there must have been some
21 strong reason that forced him to resign his portfolio.
22 The cooperative attitude then taken by HATA in the
23 YONAI Cabinet leads me to believe, even today, that
24 his resignation was against his will."
25

Your witness.

1 THE PRESIDENT: Is there to be any cross-
2 examination?

3 Mr. Chief of Counsel.

4 CROSS-EXAMINATION

5 BY MR. KEENAN:

6 Q ARITA, at the time of which you were speak-
7 ing in this affidavit you had three times previously
8 been Foreign Minister, and I assume, therefore, you
9 are well acquainted with Japan's foreign policy and
10 the respective conditions of different groups with
11 reference thereto and what had transpired particularly
12 affecting international relations in Japan.

13 A Of course, I am well acquainted with matters,
14 generally speaking; but, if you bore into details, it
15 would involve a question of memory, and, therefore,
16 I will have to refer to references before I could say
17 anything with positive accuracy.

18 Q When you joined the Cabinet of Admiral YONAI,
19 you knew him well, of course?

20 A Of course, yes.

21 Q And you had a high opinion of his character
22 and veracity?

23 A Yes, I had great faith and trust in him.

24 Q And you still have that same feeling towards
25 him?

1 A Yes.

2 Q You speak in your affidavit of the policy of
3 the YONAI Cabinet. Was it not a fact that, in the
4 first half of 1940, the period of the YONAI Cabinet,
5 the China Affair was the most important thing that had
6 happened in modern Japanese history?

7 A It was a very important thing, not only dur-
8 ing the time of the YONAI Cabinet but before and after
9 the YONAI Cabinet.

10 Q Was it not the policy of the YONAI Cabinet
11 to follow the China Affair through to a successful
12 issue, successful for Japan?

13 A Its utmost desire was to bring about a settle-
14 ment of the issue to the best interests of Japan and
15 China.

16 Q And did that not include the continuance of
17 a policy of Japan using whatever force, military as
18 well, as was found necessary to enforce the concept
19 of the Government of Japan as to China's form of
20 government?

21 MR. LAZARUS: That is far beyond the scope of
22 the affidavit, I respectfully submit, Mr. President.
23 I object.

24 THE PRESIDENT: I think it leads up to the
25 Tri-Partite Pact. I cannot say more because, if you say

1 very much about these things, you give hints to the
2 witnesses. The objection is overruled.

3 A May I have the last question of the prosecu-
4 tor repeated?

5 (Whereupon, the last question was
6 read by the Japanese court reporter.)

7 A (Continuing) It seems the last question of
8 the prosecutor was to the effect that Japan was en-
9 deavoring by various means to force upon China a
10 political organization which Japan desired, and that
11 was part of Japan's China Affair policy. But that was
12 not Japanese policy.

13 Q Whatever the policy was, the YONAI Cabinet
14 intended to support the movement with all of the
15 military force that would be necessary to bring it
16 about in China, was that not true?

17 A With regard to the settlement of the China
18 Affair, it was a dual policy of peaceful settlement
19 and also arms measures.

20 THE PRESIDENT: We will recess for fifteen
21 minutes.

22 (Whereupon, at 1045, a recess was
23 taken until 1100, after which the proceed-
24 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE INTERPRETER: This is the language
4 division. There is a correction on the witness'
5 reply just prior to the recess:

6 "There were two schools of thought regarding
7 the settlement of the China affair, one by peaceful
8 means and the other, armed measures."

9 THE PRESIDENT: Mr. Chief of Counsel.

10 CROSS-EXAMINATION

11 BY MR. KEENAN (Continued):

12 Q I take it from your last reply, Mr. Minister,
13 that the policy of the YONAI cabinet was where in
14 China -- and I assume in other parts of Asia -- you
15 were able to carry out your policy by peaceful means
16 you adopted those means but where it became necessary
17 to adopt force you adopted force?

18 A That is completely wrong. Because my reply
19 was so simple it seems that the interpreter misappre-
20 hended my statement. To make the situation clear, I
21 should like to go into greater details.

22 Q Just a moment, I merely want to know with
23 reference to the policy of the YONAI cabinet whether
24 or not in China, in the first instance, where it was
25 unable to enforce its policy or to bring it about

1 through peaceful means, it was willing to adopt
2 military measures?

3 A That is not so. Although the armed measures
4 were exercised at the outbreak of the China affair
5 the policy of the government even previous to the
6 YONAI cabinet was from the outset carrying on
7 movements to effect a peaceful settlement of the
8 issues.

9 Q Was there any change that you know of in the
10 policy, foreign policy and method of its implementation
11 in China, of Japan from the 18th of September 1931
12 until the fall of the YONAI cabinet?

13 A At different periods where armed force was
14 exercised such force was exercised because there were
15 no other alternatives and that was the only possible
16 method to employ at the time. However, where armed
17 forces were not necessary such policy was quickly
18 abandoned and every successive cabinet endeavored to
19 effect settlements through peaceful means.

20 Q When you say strong force was only used when
21 necessary, you mean when necessary to carry out the
22 foreign policy of Japan towards China, is that not
23 correct?

24 A Absolutely not. At such times it was necessary
25 because there were no other means available depending

1 on the situation for the protection of Japanese
2 lives and property.

3 Q In short, there was no change in the policy
4 during any of the four cabinets wherein you acted as
5 Foreign Minister?

6 A Of course, the circumstances of the four
7 different cabinets were different but there was no
8 change in the policy of peace.

9 Q Or no change in the policy of war, was there?

10 A Armed measures were never used for the pur-
11 pose of enforcing diplomatic policies or foreign
12 policies.

13 Q By the way, do you call that a war in China
14 or do you call it an incident or episode or affair?

15 A We considered it an incident.

16 Q And not a war?

17 A According to the interpretation of the time
18 it was not a war.

19 Q And at all times you were respecting the
20 sovereignty and the territorial integrity of China?

21 A Yes, the sovereignty and territorial integrity
22 of China were respected but inasmuch as the exercise
23 of force was necessary at times within the limit to
24 which force was exercised there might have been some
25 infringement on Chinese sovereignty and integrity.

Q Was there or were there, in fact, violations during the YONAI cabinet period of the Nine-Power Treaty?

MR. LAZARUS: Mr. President, this affidavit is very short. It says in two paragraphs: (1) the YONAI cabinet was opposed to the Tri-Partite Pact; (2) General HATA was opposed to the Tri-Partite Pact. Where these questions can possibly all come from I cannot see. This certainly is way, way beyond the scope.

THE PRESIDENT: One of the allegations in the Indictment is, Mr. Chief of Counsel, that the accused violated the Nine-Power Pact. I know you are referring to the cabinet but it is pretty close to the same thing and, again, we have to decide whether there were violations of the Nine-Power Pact, having regard to the facts.

MR. KEENAN: Mr. President, may I please reply to that?

If the question was asking this witness to forswear the issues, of course, it would be offensive and highly offensive. That was not intended. But, Mr. President, the belief of this witness and his confreres and his cabinet as to whether they are violating a treaty and their willingness to employ

1 force costing the lives of millions of people is a
2 matter that runs to the heart of this case and does
3 not forswear the issue. In other words, Mr. President,
4 in seeking this information, asking these questions,
5 I am not attempting to assist this honorable Tribunal
6 in coming to its conclusion as to whether the Nine-
7 Power Treaty was or was not violated, but whether
8 this witness, four times Fore'gn Minister, and his
9 colleagues so believed and, as we will proceed,
10 whether it was not discussed in parliamentary meet-
11 ings and whether a revision was not called for, and
12 that was a matter of policy in this very YONAI
13 cabinet, which is addressing ourselves to another
14 matter.

15 THE PRESIDENT: The question, if we recollect
16 it rightly and my colleagues support me here, did not
17 refer to the witness' beliefs at all but merely
18 directly asked him whether the Nine-Power Pact had
19 been broken.

20 Then again, Mr. Chief of Counsel--

21 MR. KEENAN: With great respect, Mr. Presi-
22 dent, I must suggest that that is a distinction
23 without a difference because this witness could not
24 answer the question without stating his belief; but
25 to shorten the inquiry I will add the words and point

1 to the witness and only ask him for his belief at
2 the time that he sat in the YONAI cabinet.

3 MR. LAZARUS: I must insist on my objection,
4 Mr. President. The rule about staying within the
5 scope of the direct examination was very vigorously
6 imposed on the defense. I submit the Tribunal should
7 continue to do so as to the prosecution.

8 MR. KEENAN: I had understood, Mr. President,
9 the objection ran to a different ground.

10 THE PRESIDENT: Yes, I was going to ask you
11 to deal with that. It may be that the first sentence
12 in the third paragraph shows that your question is
13 within the scope of the affidavit.

14 MR. KEENAN: I think, undoubtedly, Mr.
15 President, it could be argued, and soundly from a
16 strictly legalistic point of view, that that language
17 that General HATA was in full accord with the policy
18 of the cabinet and cooperated fully with it requires
19 us to know what the policy of the cabinet was.

20 Learned counsel, with commendable brevity,
21 drafting the affidavit has left some very broad
22 expressions in it.

23 THE PRESIDENT: By a majority the Court
24 sustains the objection and disallows the question.

25 Q Did not the matters of policy of Japan

1 discussed in the cabinet meetings concern matters
2 in Europe as well as matters in China?

3 A The stage had not been reached where such
4 matters required discussion at a cabinet meeting.

5 Q Was it not important in the opinion of the
6 YONAI cabinet to keep its eyes upon the fast-moving
7 events in the European theater with war already at
8 hand?

9 A It was understood in the cabinet at the
10 time of the formation of the YONAI cabinet that
11 the cabinet was completely opposed to the Tri-Partite
12 Pact alliance. Reports had been made to the cabinet
13 as to the fast-moving situation and changes in
14 Europe but there was no discussion of that matter.

15 Q Mr. ARITA, I didn't ask you yet about the
16 Tri-Partite Pact or your cabinet's attitude towards
17 it, did I?

18 A I thought it was proper to refer to such
19 matters in order to explain the policy of the YONAI
20 cabinet.

21 Q Who was your ambassador in Berlin when the
22 YONAI cabinet came into power?

23 A I think it was Ambassador OSHIMA.

24 Q That was an important post, of course?

25 A Yes.

1 Q And you are unable to recall at this time
2 for a certainty who was the ambassador from Japan
3 to Berlin when the YONAI cabinet came in?

4 A I do know.

5 Q And it was definitely OSHIMA, was it?

6 A I think it was OSHIMA.

7 Q Was he recalled?

8 A I was mistaken.

9 Q Let us get together, Mr. Minister. Do you
10 change the statement about OSHIMA being the minister
11 to Berlin?

12 A At the time of the HIRANUMA cabinet the
13 negotiations, talks with regard to the Tri-Partite
14 Pact were dropped because of the conclusion of the
15 German-Russian Nonaggression Pact, and I think OSHIMA
16 returned again to Germany after the formation of the
17 second KONOYE cabinet. OSHIMA returned to Japan once
18 and I think he returned to Germany after the formation
19 of the second KONOYE cabinet.
20

21 Q Do you recall, Mr. Minister, who was the
22 minister to Berlin when you became the Foreign Minister
23 in the YONAI cabinet?

24 A I am at a loss at the present moment but if
25 you would look into the records this question would be
made clear. I do not recall.

1 Q Did you know OSHIMA well and know KURUSU
2 well too?

3 A I do not know OSHIMA very well. I know
4 KURUSU, however, very well.

5 Q Do you know what the belief of OSHIMA was
6 towards the Tri-Partite, what the belief of KURUSU
7 was towards the Tri-Partite, or did you so know when
8 you were Foreign Minister in the YONAI cabinet in
9 January 1940?

10 THE PRESIDENT: Mr. Cunningham.

11 MR. CUNNINGHAM: That is calling for an
12 opinion and conclusion of the witness. The witness
13 may testify what he did or what he said but to testi-
14 fy as to what the man's state of mind was seems to
15 be calling for a far-fetched conclusion.

16 THE PRESIDENT: We would not let him testify
17 as to OSHIMA's thoughts or beliefs unless OSHIMA
18 expressed them, and he may have done so for all we
19 know. Objection overruled.
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1 MR. KEENAN: Will you read the question?

2 (Whereupon, the last question was
3 read by the official court reporter.)

4 A I do not know what the views of OSHIMA
5 were at the outset of the establishment of the YONAI
6 Cabinet, but I do know what his views were at the
7 time of the previous cabinet under HI. NUMA.

8 Q Were they not emphatically pro-Axis and pro-
9 German with reference to Japan's foreign policy?

10 A I think he believed that a German-Japanese
11 rapprochement was favorable to Japan.

12 Q And he was the Minister to Germany from
13 Japan when you were Foreign Minister in the YONAI
14 Cabinet; is that not right?

15 A In my recollection Ambassador OSHIMA became
16 Ambassador to Germany midway between the first KONOYE
17 Cabinet and quit his position and returned to Japan
18 during the ABE Cabinet, which succeeded the HIRANUMA
19 Cabinet.

20 Q You mean the ABE Cabinet?

21 A I think it was the ABE Cabinet.

22 Q Well, don't you remember the Prime Minister
23 or the name of the cabinet preceding the last cabinet
24 you sat in as Foreign Minister?
25

A I think it was the ABE Cabinet.

1 Q Did the Japanese Foreign Office during the
2 time you were Foreign Minister give instructions to
3 Ambassador SATO to confer with German authorities
4 upon strengthening the coalition between the two
5 countries?

6 A Ambassador SATO went to Italy to respond to
7 a good will visit paid to Japan by Aurita and Count
8 Conti.

9 Q Well, while he was on that good will mission
10 don't you know whether he dropped in on Ribbentrop in
11 some part of Germany -- I believe Berlin, or perhaps
12 Berchtesgarden?

13 A While en route to Italy Ambassador SATO had
14 instructions to carry a message of good will to the
15 German Government for the purpose of creating better
16 friendly relations between Germany and Japan.

17 Q What was the rank of SATO?

18 A Special Ambassador.

19 Q Was that the same type of rank that
20 Mr. KURUSU later had when he came to the United States
21 of America during the latter part of 1941?

22 A I think the same.

23 Q And was he not under your authority and
24 subject to your instructions?

25 A Yes, of course.

1 Q And that alone, is it not a fact that he had
2 a conversation with Ribbentrop with reference to
3 strengthening the coalition between Germany and Japan,
4 but did he not make such a report, a formal report to
5 you as Foreign Minister in the YONAI Cabinet?

6 A I received no report from Ambassador SATO. He
7 returned to Japan after the fall of the YONAI Cabinet.

8 MR. KEENAN: We will come to that in a moment.

9 Q And in this conference between SATO and
10 Ribbentrop did not SATO congratulate Germany on its
11 victory over France?

12 A Probably he did.

13 MR. KEENAN: Is the answer, "Probably he did"?

14 THE INTERPRETER: Yes.

15 Q Was that part of the mission that you sent
16 him over on to Germany or to Italy?

17 A Yes.

18 Q Well, do you happen to remember whether or
19 not France had surrendered at the time that SATO left
20 Japan on this mission?

21 A I think it was before.

22 Q Did SATO state to Ribbentrop that just as
23 in Europe a new order would now be brought about by
24 Germany that Japan was seeking to establish a new order
25 in the Far East and in the South Seas?

1 A I do not recall what he said.

2 Q To refresh your mind, did not SATO state
3 that in these parallel efforts a very close coopera-
4 tion between Japan and Germany seems to have been
5 in operation?

6 A Well, I hardly have any exact recollection
7 of what transpired, but for your information I might
8 state that at that time it was the government's policy
9 to make efforts not to aggravate relations between
10 Germany and Japan.

11 Q I understand. And did he not further state,
12 that is, SATO to Ribbentrop, that for three years
13 Japan had been holding the attention of the English,
14 French, and American governments, making easier the
15 establishment by Germany of a new order in Europe?

16 A As I have said before, I have no exact
17 recollection as to what transpired over there, but
18 I might add that since it was a good will mission I
19 am sure he made complimentary remarks.

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1 Q And you would ascribe the remark that I have
2 just alluded to of SATO as being merely a complimentary
3 remark to Germany? Did the purple language of dip-
4 lomacy go to that extent?

5 A As I have said before, I have no recollection
6 nor have I ever seen the document to which the prose-
7 cutor has referred to in speaking of what SATO said,
8 but I can say that what SATO had said had to be fitting
9 the atmosphere then prevailing in Japan.

10 Q In other words, you would not have reproved
11 him, as his superior, for making such statements,
12 would you, had you known about them at the time they
13 were made?

14 A Even should SATO have used such a word, we
15 would have no choice but to condone it.

16 THE PRESIDENT: Did you not say that he was
17 on a good will mission, and that was an expression of
18 good will?

19 THE WITNESS: It was a mission of good will
20 to Italy and utilized the opportunity of being in
21 Europe also to convey the good will intentions of Japan
22 to Germany and --

23 Q And was that carrying out the policy of the
24 YONAI Cabinet in the premises?

25 A The policy of the YONAI Cabinet was to

1 continue as much as possible good relations with
2 Germany to the extent that it would not be seriously
3 harmful to Japan's major interests.

4 Q And did not SATO say to Ribbentrop at that
5 time that Japan, since the beginning of the Chinese
6 war, had tied up the American Fleet in the Pacific?

7 A No, I do not recall that.

8 Q Would that statement, in your opinion, have
9 been within the confines of the good will mission?

10 A At that time Germany desired or, I might say
11 demanded, assistance from Japan, and it was Japan's
12 position instead of -- and it was Japan's intention
13 instead of giving any positive assistance to make such
14 statements to have the German side believe that they
15 were receiving some kind of assistance.
16

17 Q Am I to understand you that at that time Japan
18 was being threatened by Germany?

19 A I do not know whether the word "threatened"
20 would be applicable to the case.

21 Q Would it not be more applicable that you
22 would be fearful that your plan for exploitation of
23 East Asia would be interfered with by Germany unless
24 you played the game with Germany?

25 A At that time there was an opinion prevalent
in Japan that a cooling off of German-Japanese

1 relations would be unfavorable to the settlement of
2 the China Affair and other problems.

3 Q The two of them were very closely linked to-
4 gether, were they not, as you now admit?

5 A Yes, since the conclusion of the anti-
6 Comintern Pact good relations were continuing between
7 the two countries.

8 Q And it was now the turn to employ some deceit
9 towards Germany for the best interests of Japan, is
10 that correct?

11 A No, there were no intentions or any desire to
12 deceive Germany.

13 Q Did Ribbentrop not state to your ambassador,
14 your special ambassador, SATO, that he had long
15 favored cooperation between Germany and Japan, and that
16 the work of he and OSHIMA had borne fruit for both
17 parties?

18 A I do not know.

19 Q Did Ribbentrop not further state that he would
20 be glad to hear further of Japan's plans for cooperat-
21 ing with Germany?

22 A I have no recollection.

23 Q And as a result of this conference, did not
24 the Japanese Foreign Office prepare a plan for a
25 coalition between Japan and Germany?

1 A No.

2 Q And was not this plan presented to the joint
3 conference of representatives of the War, Navy and
4 Foreign Ministers of Japan on 12 July 1940?

5 A With regard to that I should like to say that
6 I learned of this for the first time in an article re-
7 porting the proceedings of this very Tribunal. At
8 that time I did not have a clear recollection of it
9 and gave it some thought and so as I said before
10 Japan desired to continue her relations with Germany
11 in so far as it would not aggravate such relations,
12 but there was a part -- there were some circles who
13 desired to strengthen Japanese-German relations if
14 that was at all possible, and so since a circle in
15 Japan had entertained such a desire, I instructed my
16 subordinates to prepare some kind -- to conduct some
17 kind of a study, although I said that it was a diffi-
18 cult study -- to conduct some sort of a study to
19 render closer relations between Germany and Japan in
20 so far as it would not aggravate Japan's important
21 interests -- endanger major Japanese interests and --

22 THE PRESIDENT: We will adjourn until half-
23 past one.
24

25 (Whereupon, at 1200, a recess was
taken.)

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1 AFTERNOON SESSION

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3 The Tribunal met, pursuant to recess, at 1330.4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now resumed.6
7 H A C H I R O A R I T A, recalled as a witness on
8 behalf of the defense, resumed the stand and
9 testified through Japanese interpreters as follows:

10 THE PRESIDENT: Mr. Chief of Counsel.

11 BY MR. KEENAN (Continued)

12 Q Just before recess I understood you to state
13 that you asked some of your subordinates to get up a
14 plan for coalition between Japan and Germany; is that
15 correct?16 A To explore and find out whether such was
17 possible or not.18 Q And, you were successful in that exploration.
19 You did get a plan, did you not?20 A Up to the time of the resignation of the YONAI
21 Cabinet I never received any report on the study.22 Q Did not this plan provide that Germany would
23 recognize Japan's sphere of influence and political
24 leadership in French Indo-China, the Dutch East Indies
25 and the South Sea areas?

1 A Since I did not receive a report, I do not
2 know whether or not such was its context.

3 Q I will just add two sentences: That the plans
4 further included that Germany would give proper support
5 to the disposition of the China Incident, Japan would
6 take steps to check Britain in East Asia to facilitate
7 the surrender.

8 Was not the final draft of the Agreement
9 approved at a meeting of the four ministries, held
10 16 July, 1940?

11 A Such was absolutely not the case. The YONAI
12 Cabinet was just about to resign on July 16.

13 Q The YONAI Cabinet was functioning on the 12th
14 of July, 1940; was it not?

15 A Yes, it existed but received no reports.

16 MR. KEENAN: If the Court please, I respect-
17 fully refer the Court, in connection with this part of
18 the cross-examination, to exhibit 524 on page 1679 of
19 the record for the SATO-Ribbentrop Conference of 8 July
20 1940; to exhibit No. 527, record page 6191 for the
21 Conference of War, Navy and Foreign ministries of
22 12 July, 1940; and to exhibit 528, at page 6212 of the
23 record, for the Second Conference of War, Navy and
24 Foreign ministries, 16 July, 1940.
25

 If the Court please, I have a question that I

1 think is pertinent and important with reference to this
2 witness' official action during the period of his
3 affidavit as to the Nine-Power Treaty as part of the
4 Diet proceedings. I do not want to infringe upon the
5 rulings of this Court, and if it is held to be in-
6 competent, I don't want to put the question. I ask
7 this question, Mr. President, because I am not certain
8 whether the Tribunal sustained the objection to a
9 prior question, in the Nine-Power Pact, of this witness.
10 because it was without the scope of the affidavit, or
11 it was an attempt to forswear the issue.

12 THE PRESIDENT: Witness, don't answer the next
13 question unless and until you are directed.

14 Put the question, Mr. Chief of Counsel and we
15 will decide on it.

16 Q Were you present at the fourth meeting of the
17 Budget Committee of the Diet on 7 February, 1940 in
18 your capacity as Foreign Minister in the YONAI Cabinet?

19 THE PRESIDENT: Answer that, witness.

20 A Which cabinet are you referring to?

21 Q I am referring to the fourth meeting of the
22 Budget Committee of the 75th Diet, held 7 February, 1940,
23 wherein you were asked a question by Committee Member
24 KUBOI, K-U-B-O-I.

25 A I have no exact recollection, but I do remember

1 Representative KUBOI asking me a question.

2 THE PRESIDENT: Don't answer the next question
3 until you are directed to do so.

4 Q Were you not asked by Mr. KUBOI in a formal
5 meeting -- Were you not interrogated as a State Minister,
6 meaning Foreign Minister, as follows: "...I should like
7 to ask the Foreign Minister and the Premier if the
8 government has any intention of renouncing the Nine-
9 Power Treaty"?

10 MR. LAZARUS: Mr. President, the rule that
11 cross-examination must be strictly within the confines
12 of the direct examination was very vigorously imposed
13 upon the defense and I very respectfully submit that
14 rules should be kept in effect now, while prosecution
15 is cross-examining, and therefore I object to it.

16 THE PRESIDENT: The Court has no intention of
17 departing from it.

18 MR. LAZARUS: In our affidavit, sir, we refer
19 only to the Tripartite Pact and General HATA's stand on
20 it and the cabinet's stand on it. I respectfully submit
21 that that question is beyond the scope of the direct.

22 THE PRESIDENT: How do you suggest that the
23 question comes within the scope of the affidavit, Mr.
24 Chief of Counsel?

25 MR. KEENAN: If the Court please, this witness

1 who was four times Foreign Minister and who was called
2 on behalf of a War Minister, a Marshal of Japan, has
3 made the statement that General HATA was War Minister
4 in the YONAI Cabinet, and throughout his tenure in
5 office he was in full accord with the policy of the
6 Cabinet and cooperated fully with it. Period. I will
7 read him the entire sentence.

8 Mr. President, that is not alone a separate
9 sentence and thought from the Tripartite contention,
10 but is in a different paragraph. It is isolated and
11 completed.

12 I should think, Mr. President, that the accused
13 would be very anxious to have the statement carefully
14 explored, his position as a cabinet member, in this
15 important ministry.

16 I think that we are well within our grounds
17 of determining what the policy of the YONAI Cabinet was,
18 the foreign policy that led to this war and the violation
19 of these treaties, as we contend, and we should not be
20 held within the narrow stricture of the single aspect
21 which seems to favor this particular accused at this
22 moment to attempt to confine himself to.

23 Mr. President, I wish just one more sentence.
24 The charge in the Indictment against this accused, HATA,
25 is not confined to that he promoted or helped to promote

1 the Tripartite Pact. It has to do with other matters
2 within the knowledge of this accused and within the
3 scope of the language he uses in this affidavit or in
4 his testimony. If they intended this witness' testimony
5 to be confined to the Tripartite Pact, they should have
6 so showed in their affidavit lest we not be subject
7 to comment, and just comment from the Court, that we
8 haven't pressed our cross-examination sufficiently of
9 this witness who has knowledge of the premises and
10 materials upon which to cross-examine him.

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1 THE PRESIDENT: The objection is overruled
2 and the question allowed, by a majority.

3 MR. KEENAN: Mr. President, I have a record,
4 which we contend to be a record of the proceedings of
5 the Budget Committee of the 75th Diet, to be marked
6 for identification.

7 CLERK OF THE COURT: Defense document
8 entitled, "Proceedings of the 75th Diet," will
9 receive exhibit No. 3201 for identification only.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 3201 for identification.)

13 MR. KEENAN: May I have that record ex-
14 hibited to the witness?

15 (Whereupon, a document was handed
16 to the witness.)

17 BY MR. KEENAN (Continued):

18 Q I will ask you to refer to that part of the
19 exhibit handed you, containing the question from
20 Committee Member KUBOI and your answer, and I will ask
21 if that is not one of the regularly kept records that
22 you recognize of such proceedings.

23 MR. KEENAN: Mr. President, in the interest
24 of saving time, I am asking the Language Section to
25 follow the reading of the question in English and in

1 Japanese, and I am putting this question to the wit-
2 ness:

3 Q Were you not asked this question by Committee
4 Member KUBOI, and did you not give the answer recorded
5 in this record:

6 From: "Committee Member KUBOI:

7 "In regard to this subject, the Foreign
8 Minister just now stated that he has not given it any
9 thought. I would not like to leave it as such.

10 "Moreover, from the viewpoint of deciding on
11 how to settle the incident, I should like to ask the
12 Foreign Minister and the Premier if the government has
13 any intention of renouncing the Nine-Power Treaty.
14 Japan, which, at that time had an alliance with
15 Britain, participated in World War I in order to keep
16 faith with Britain. As you all know, due to Japan's
17 participation in the great European war, peace came to
18 the Far East. In this war, Japan attacked the German
19 Army in Tsingtao and our Navy advanced as far as the
20 Mediterranean Sea. With the termination of this War,
21 Britain renounced the Anglo-Japanese Alliance and it
22 was buried into oblivion in Washington. The Nine-Power
23 Treaty was perhaps a sort of a substitute for this
24 abrogation. However, it is needless to say that this
25 Nine-Power Treaty is a scheme of Britain and the

1 United States, planned to restrain the continental
2 policy of Japan. Japan is now waging a war with
3 China and is establishing a new order in the Far East.
4 It is needless to say that this Nine-Power Treaty is a
5 serious obstacle both in the future settlement of the
6 incident and in future wars. And because of the exist-
7 ence of this treaty, it is difficult to ascertain how
8 much Japan has worried about her diplomacy, and how
9 much the Japanese Foreign Office and the government
10 has troubled themselves because of third powers. Be-
11 sides when the Nine-Power Treaty Conference was held
12 some years ago, -- I think it was in Brussels, Japan
13 did not recognize this conference and did not send her
14 representatives. Even though Japan has taken such an
15 attitude, why Japan still allows the existence of the
16 treaty and does not renounce it, is beyond my compre-
17 hension from the standpoint of settling the incident.
18 Why does not the government dare to renounce this
19 Nine-Power Treaty?

20 "Looking at the world situation, a treaty
21 cannot be renounced unless there is a serious change
22 in the situation. However, if we compare the present
23 situation with the situation at the time the treaty
24 was signed, such major changes have taken place as the
25 independence of Manchukuo in China, and the waging of

1 an unprecedented war by Japan. Ordinarily, wars are
2 waged among nations for even such trifling reasons as
3 one nation stepping on another's hand or foot. There
4 is no greater change in the international situation
5 than the establishment of Manchukuo by means of war.
6 In fact, no greater changes have ever been made than
7 the change in the situation in the orient and in China.
8 In reference to this, has our government, in view of
9 the important changes in the situation in the Far
10 East and in the light of this international principle,
11 the determination to announce the renunciation of the
12 Nine-Powers Treaty in conformity with the principle of
13 international law concerning this change in the situ-
14 ation? Soon, the Central Government will be estab-
15 lished and even when it is established, as I said
16 previously, I think it is needless to say that in the
17 settlement of the Sino-Japanese Incident and also in
18 all negotiations of the Central Government with third
19 countries, the treaty will create extremely difficult
20 international problems. I believe that the ministers
21 of war and the navy realize how much Japan suffered
22 from the standpoint of executing this incident. Also,
23 how much and how often has the foreign minister suffer-
24 ed in regards to this problem? In my opinion, the
25 announcement of the abrogation of the Commercial

1 Treaty by America was probably based on the Nine-
2 Power Treaty. It is a great disadvantage to Japan
3 that there exists such a treaty which is very unfavor-
4 able to her from the standpoint of carrying on the
5 incident and which she hardly recognizes. Referring
6 to the provisions of this Nine-Power Treaty, if we,
7 for example, read through the KONOYE Statement, it
8 would seem that the attitude of Japan towards the
9 China Incident was determined mostly from the stand-
10 point of the articles provided in the Nine-Power Treaty.
11 In spite of the difference in spirit, and in spite of
12 the difference in the way of thinking on the part of
13 Japan, the Foreign Office or those who are concerned
14 in diplomatic affairs are apt to be swayed by the
15 articles of a treaty, if one exists. Even if it is
16 said that the spirit is lacking, as long as there is
17 a treaty at present, it is natural that they would be
18 swayed by it. Therefore, glancing over the statement
19 of /Prince/ KONOYE, and comparing the text of the
20 KONOYE Statement with that of the Nine-Power Treaty,
21 I feel as though the smooth movement of the pen was
22 driven by the Nine-Power Treaty. Has or has not the
23 Foreign Minister the intention of renouncing such a
24 troublesome treaty as this Nine-Power Treaty?"
25

The record shows:

1 "(ISHIZAKA, acting chairman of the committee
2 leaves and the Chairman takes the seat.)

3 "Proceeding further, when the so-called new
4 central government is established, is he or is he not
5 ready to renounce the Treaty in co-operation with this
6 Central Government? I ask questions on these two
7 points.

8 "State Minister ARITA:

9 "There are some articles in the Nine-Power
10 Treaty which do not suit the present situation in the
11 Far East. In other words, the gist is that as it now
12 stands the so-called old basic principle is not appli-
13 cable to the present situation in the Far East. On
14 the one hand, it can be said that the renunciation is
15 favorable in the establishment of the new order in the
16 Far East and in the amelioration of the present situ-
17 ation; but on the other hand, there is a possibility
18 that the renunciation might cause some repercussions.
19 Therefore, I think that there is a necessity for com-
20 paring these two sides and also a necessity for care-
21 fully considering the problem of renouncing the Nine-
22 Power Treaty. And, as a problem for the future, when
23 the Central Government is established in China, care-
24 ful deliberation is also required as to what measures
25 Japan and the new Central Government should take in

regards to this, the renunciation of the treaty."

1 Were those questions asked and was that
2 question asked and did you give that answer?

3 A Yes, I think so.
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1 Q And do you recall that Marshal HATA, the
2 accused, was present at that hearing before the Budget
3 Committee when that question was asked you and that
4 answer given?/

5 A I have no recollection, but seeing this record
6 of the proceedings of the Imperial Diet, I notice
7 there is an answer given to an interpellation by
8 General HATA, so I presume he was there.

9 Q And the question to him was in regard to this
10 question, "I should like to ask the opinions of the
11 Minister of War and the Navy Minister," and did not
12 State Minister ARITA reply --

13 THE PRESIDENT: Mr. Lazarus.

14 MR. LAZARUS: On the first question there was
15 a question of whether or not that was the question or
16 the policy, rather, on the Tripartite Pact and the
17 Nine-Power Pact of the cabinet, and now this time we
18 come to the question of what were General HATA's ideas
19 on the question of the Tripartite Pact. We do not
20 take that up; it is not in the affidavit. The only
21 question we have taken up with reference to policies
22 is the Tripartite Pact, and I respectfully submit
23 that that question is definitely outside the scope.

24 MR. KEENAN: Mr. President, if the accused's
25 counsel does not wish to have the matter of Marshal

1 HATA's position on the question of the Nine-Power
2 Treaty explored at this time, we will not press the
3 question. We may be able to avoid the controversy
4 at a later date.

5 THE PRESIDENT: The part of the affidavit
6 on which the last question was admitted is part of
7 HATA's case, but we have no desire for you to press
8 it.

9 Q Minister ARITA, did you have a conversation
10 with the accused, then War Minister HATA, and Premier
11 YONAI, who testified today, on the first of July 1940,
12 with reference to SUMA, Chief of the Information
13 Bureau?

14 A I do not recall the exact date, whether or
15 not it was the first of July and I do not recall
16 whether Premier YONAI was present, but I did have a
17 talk with War Minister HATA with regard to SUMA.

18 Q And did you repeat the substance -- did you
19 refer to that conversation in another conversation
20 you had with Baron HARADA on 2 July 1940?

21 A I do not remember the exact date and I do
22 not remember exactly whether or not I spoke -- I met
23 HARADA then and spoke on such matters, but since I was
24 providing him with various information from time to
25 time, I may have told him about SUMA.

1 Q Baron HARADA, as you know, was making reports
2 to Genro SAIONJI from time to time -- Prince SAIONJI,
3 referred to as Genro, I believe is correct.

4 A I know that Baron HARADA was reporting vari-
5 ous information to Prince SAIONJI.

6 Q And Prince SAIONJI had a unique position in
7 the Japanese nation at that time?

8 A In my knowledge Prince SAIONJI in those days
9 was responding to inquiries from the Throne with re-
10 gard to the cabinet, the premiership of succeeding
11 cabinets.

12 Q And was he the sole surviving Genro at that
13 time?

14 A Yes.

15 Q And that gave him a position of prime
16 importance in the empire, did it not?

17 A Well, it is questionable whether his posi-
18 tion was prime or important, but his task was limited
19 to responding to inquiries from the Throne with regard
20 to the recommendation of the premiership to the suc-
21 ceeding cabinet at times of cabinet changes.

22 There seems to have been a slight misappre-
23 hension on the part of the interpreter, and so I shall
24 repeat that Prince SAIONJI's duty was to give his
25 opinion with regard -- to give his opinions in

1 connection with the recommendation of the headship of
2 the succeeding cabinet, and I cannot say whether his
3 task involved any more than that, on my own part.

4 Q Well, with the considerable number of changes
5 that took place in the cabinet in a relatively brief
6 time, that was quite a chore, was it not?

7 A Although this is something that HARADA him-
8 self said, Prince SAIONJI was quite advanced in his
9 years and it was difficult for him to express opinions
10 every time some political changes occurred, especially
11 when they occurred frequently from time to time.

1 Q HARADA, however, was fully compos mentis
2 and capable of receiving conversations and recording
3 them accurately, was he not?

4 A Generally speaking, I think so. However, in-
5 asmuch as these questions involved political, economic,
6 and other matters, there is room for doubt whether or
7 not Baron HARADA understood each and all of them;
8 and with regard to Baron SAIONJI's diary -- Baron
9 HARADA's diary, it is my understanding that they
10 were notations that he had taken down -- they consis-
11 ted of notations he had taken down to make reports to
12 SAIONJI, further supplemented and amplified later on.
13 Although I do not doubt Baron HARADA's capability nor
14 his sincerity and good faith, still I think there is
15 room for doubt whether he was conveying the truth and
16 the full facts in every case -- every instance.

17 Q Since you refer to the expression "room for
18 doubt" and political and economic matters, let us turn
19 our attention to a very simple matter: your conversa-
20 tion as it is alleged to have been had with HATA on
21 the 2nd day of July, 1940.

22 Did you on that day say to Baron HARADA,
23 "Yesterday when I had an interview with the War
24 Minister and the Premier, the War Minister incessant-
25 ly said. 'Peace and order will not be restored in the

1 ministry until SUMA, Chief of the Information Bureau,
2 is relieved from his post," and did you add this,
3 precisely or in substance? "HATA's attitude is very
4 dubious also. Premier YONAI asked HATA, 'Did you
5 read the written testimony of SUMA made at the Kempeitai
6 headquarters?' and HATA answered, 'No, not yet.'"

7 Continuing your reported statement to Baron
8 HARADA: "Therefore the Premier said, quoting the
9 Premier, 'Then we both must study the matter.' They
10 decided to meet again"; and then did you say to
11 HARADA, "HATA's attitude is suspicious. I am thinking
12 of seeing the Premier leisurely sometime today."

13 Did you make that statement?

14 A With regard to the SUMA case, I recall having
15 had a conversation with War Minister HATA, but my
16 recollection is that the contents of the conversation
17 were quite different from what was purported to have
18 transpired according to the Prosecutor's reading.

19 Q Well, to simplify the matter, can you tell us,
20 in substance, whether you indicated or used words, in
21 substance, in your conversations with HARADA that
22 HATA was suspicious or that you had suspicions of
23 him? In asking that question I would remind you that
24 HATA at that time was not alone War Minister but had
25 been chief aide-de-camp to the Emperor of Japan and

1 held, I believe, the highest title in the Japanese
2 Army.

3 MR. LAZARUS: Mr. President, for the sake
4 of the record: General HATA did not become Field
5 Marshal until several years later, and had been aide-
6 de-camp to the Emperor two years previously.

7 MR. KEENAN: We accept those corrections and
8 still press the question.

9 A I have no recollection that I had ever said
10 anything about being suspicious of HATA's attitude.
11 I should like to further amplify on this with re-
12 gard to the interview I had with the War Minister
13 in connection with the settlement of the SUMA case.
14 General HATA's attitude was most fair and just. I
15 don't know what day in July it was. I would have to
16 see the newspapers before I could give you the exact
17 date. But with regard to this question, General HATA
18 and I published a joint statement in the press.

19 Q So that if your conversation with HARADA
20 is reported as "HATA's attitude is very dubious,"
21 you would now change that and say that his attitude was
22 very just, is that correct?

23 A It is very clear in my memory that HATA's
24 attitude at that interview with me was very just and
25 fair.

1 Q You did read what happened in the newspapers
2 around that time pertaining to matters of cabinet
3 importance?

4 A Yes.

5 I have one more final point. Referring to
6 the attitude of the YAMAGUCHI Cabinet, of which you were
7 Foreign Minister, on the High Power Treaty of 1911,
8 was it your belief that the High Power Treaty was
9 being broken by Japan in the movement of its
10 troops or otherwise in China?

11 MR. ARITA: I think, your Honor, I may
12 have missed the answer. May I ask your Honor's
13 question for a moment while we have the answer re-
14 peated?

15 THE PRESIDENT: I didn't hear it; I don't
16 know whether he gave it.

17 MR. ARITA: Attention was brought to the

18 MR. ARITA: Mr. President, I would like to
19 make an objection to this question on the same basis
20 that was made before, that there will be a double
21 view of the witness. It is the province of this
22 Tribunal to determine whether or not the High Power
23 Treaty was being violated.

24 THE PRESIDENT: It is not --

25 MR. ARITA: We are glad that the

1 Q Can you tell us what you had in mind by say-
2 ing "I am thinking of seeing the Premier leisurely
3 some time today" when discussing Marshal HATA or
4 General HATA with HARADA?

5 I have one more final point. Returning to
6 the attitude of the YONAI Cabinet, of which you were
7 Foreign Minister, on the Nine Power Treaty of 1940,
8 was it your belief that the Nine Power Treaty was
9 being broken by Japan in the movement of its
10 troops or otherwise in China?

11 MR. KEENAN: I think, your Honor, I may
12 have missed the answer. May I have your Honor's
13 indulgence for a moment while we have the answer re-
14 peated?

15 THE PRESIDENT: I didn't hear it; I don't
16 know whether he gave it.

17 MR. KEENAN: Attention was brought to the --

18 MR. LAZARUS: Mr. President, I would like to
19 make an objection to this question on the same basis
20 that was made before, that this calls for a conclu-
21 sion of the witness. It is the province of this
22 Tribunal to determine whether or not the Nine Power
23 Pact was being violated.

24 THE PRESIDENT: He is not --

25 MR. KEENAN: We are glad that the accused

1 agrees with that. We do, too. Excuse me.

2 THE PRESIDENT: Well, I didn't hear you and,
3 probably, you didn't hear me, Mr. Chief of Counsel.

4 MR. KEENAN: I very humbly apologize.

5 THE PRESIDENT: There is no need to apolo-
6 gize.

7 MR. KEENAN: I might state that the prose-
8 cution joins with the agreement now of the accused's
9 counsel that it is for the Court to make the determin-
10 ation of the issue as to whether a treaty was or was
11 not broken by these accused. Otherwise, we press
12 the question.

13 THE PRESIDENT: Yes. I pointed out, of
14 course, that Mr. Lazarus was not right in saying that
15 you were asking the opinion of the witness. That
16 is not so: but the attitude of the cabinet. He
17 would state that as a matter of fact and not as his
18 own opinion. However, I may have misapprehended the
19 question, so we will have it from the court reporter.

20 MR. KEENAN: Mr. President, I am asking for
21 the views of the cabinet. I thought that was under-
22 stood. My question may not have been sufficiently
23 clear on that. If not, I want to amplify it and say
24 that I am asking the view of the cabinet on that
25 point.

1 MR. LAZARUS: It is still objectionable, Mr.
2 President. He can't give the opinions or conclu-
3 sions of the cabinet. That is for this Tribunal to
4 determine, sir.

5 MR. KEENAN: Mr. President --

6 THE PRESIDENT: The purpose is not to sub-
7 stitute the view of the cabinet for that of this
8 Court. Obviously, it isn't. It is to discover
9 whether the policy of the cabinet was to observe its
10 treaty obligations or not which is another question.
11 HATA was a member of the Japanese Cabinet. The ob-
12 jection is overruled and the question allowed.

13 A I do not know what to reply to him. May I
14 have the question repeated?

15 (Whereupon, the last question was
16 read by the official court reporter as
17 follows:)

18 "Q Returning to the attitude of the YONAI
19 Cabinet, of which you were Foreign Minister, on the
20 Nine Power Treaty of 1940, was it your belief that
21 the Nine Power Treaty was being broken by Japan in
22 the movement of its troops or otherwise in China?"

23 THE PRESIDENT: The witness is identified
24 with the cabinet there. The question is, as to the
25 attitude of the cabinet. Answer the question.

1 A (Continuing) Since such questions were not
2 discussed nor decided in and by the cabinet I do not
3 know whether it can be certain that they represent
4 the views of the government. However, it was agreed
5 between the Foreign Minister and the Prime Minister;
6 and, in some cases, when the War and Navy ministers
7 entered into discussions with us, it was our common
8 agreement to loyally and faithfully observe the
9 provisions of the Nine Power Pact whenever we dis-
10 cussed their relations with the China Affair. How-
11 ever, inasmuch as military action was already going
12 on, we made every effort to bring about an expedi-
13 tious settlement in the event any violation of treaty
14 provisions took place.

15 Q I didn't ask you that, Mr. Witness. I have
16 asked you about the attitude of the cabinet as to
17 the Nine Power Treaty being broken. Now, I will ask
18 you specifically if the accused HATA did not say
19 that the Nine Power Treaty should not be permitted
20 to interfere with the military operations of Japan
21 in China.

22 A He has never said such a thing.

23 MR. KEENAN: That concludes the cross-
24 examination.
25

THE PRESIDENT: Mr. Cunningham.

1 MR. CUNNINGHAM: If your Honor please, in-
2 stead of cross-examining this witness on who was the
3 Japanese Ambassador to Germany at the time of the
4 YONAI Cabinet, I suggest to revert to exhibit 121,
5 page 768 of the transcript, which shows that OSHIMA
6 resigned from his post and went into retirement in
7 December, 1939 at the time of the ABE Cabinet which
8 preceded the YONAI Cabinet.

9 THE PRESIDENT: Mr. Lazarus.

10 MR. LAZARUS: No redirect, Mr. President.

11 MR. KEENAN: Mr. President, I will supply
12 the Court with the page in the record to show that
13 OSHIMA did not retire but went back to Berlin as
14 Ambassador again. Furthermore, we did not put
15 the questions to the witness as to who the Ambassa-
16 dor was or where Mr. OSHIMA was to establish that
17 fact; it was to test the knowledge and credibility
18 of this witness as well.

19 MR. CUNNINGHAM: In order to clarify that,
20 I want to read, then, the rest of the statement which
21 I thought was unnecessary if a reference was made to
22 the record.

23 THE PRESIDENT: I suggest that what you have
24 given us is sufficient, Mr. Cunningham. I think it
25 is true that OSHIMA was a German Ambassador twice.

1 During what periods, I cannot recall. That reference
2 will clear up the matter. That is exhibit 121;
3 isn't that his career?

4 MR. CUNNINGHAM: Yes, exhibit 121 is the
5 chronological order of his career, but it stops at
6 the point in controversy here as far as the record
7 page is concerned, and that is why I want to finish
8 this one sentence which clarifies the misunderstanding
9 which has been created here.

10 THE PRESIDENT: From where will you take
11 that sentence?

12 MR. CUNNINGHAM: I take that from exhibit
13 121, the part which was not read into the record.

14 "OSHIMA was again appointed the Ambassador
15 to Germany in December, 1940 by the second KONOYE
16 Cabinet which succeeded the YONAI Cabinet in July,
17 1940."

18 MR. LAZARUS: No redirect, Mr. President.
19 May the witness step down?

20 THE PRESIDENT: He is released on the usual
21 terms.

22 (Whereupon, the witness was ex-
23 cused.)

24 We will recess for fifteen minutes.

25 (Whereupon, at 1445, a recess was

1 taken until 1500, after which the proceed-
2 ings were resumed as follows:)

3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.

5 THE PRESIDENT: Dr. KANZAKI.

6 MR. KANZAKI: I call the witness NODA,
7 Kengo.

8 - - -

9 K E N G O N O D A, called as a witness on behalf
10 of the defense, being first duly sworn, testified
11 through Japanese interpreters as follows:

12 DIRECT EXAMINATION

13 BY MR. KANZAKI:

14 Q Please state your name and address.

15 A My name is NODA, Kengo. My address is
16 23 Shiomigaoka-machi, Chiba, Chiba City.

17 MR. KANZAKI: Please show the witness
18 defense document 2008.

19 (Whereupon, a document was shown
20 to the witness.)

21 Q Is this your affidavit and does it bear your
22 signature? Is that your affidavit and have you
23 signed it?

24 A Yes.

25 Q Are its contents true and correct?

A True and correct.

1 MR. KANZAKI: Itender defense document 2008
2 in evidence.

3 THE PRESIDENT: Mr. Sutton.

4 MR. SUTTON: The prosecution does not object
5 to the document, but we have just received word from
6 our language people that there may be very serious
7 differences in translation. For that reason I ask
8 that it be immediately referred to the language sec-
9 tion and particularly that they check the second
10 sentence in paragraph 3.
11

12 THE PRESIDENT: We will refer this to the
13 language section after admitting it on the usual
14 terms.

15 CLERK OF THE COURT: Defense document 2008
16 will receive exhibit No. 3202.

17 (Whereupon, the document above re-
18 ferred to was marked defense exhibit 3202
19 and received in evidence.)

20 MR. KANZAKI: I shall now read court exhibit
21 3202.

22 THE PRESIDENT: It may be that this further
23 translation can be obtained in a few minutes, although
24 I notice Major Moore is not present.
25

MR. SUTTON: May it please the Tribunal, since

1 the question is raised as to whether or not an entire
2 sentence should be eliminated, we would ask the Tri-
3 bunal to have an immediate reference, and, if possible,
4 a report from the language section.

5 THE PRESIDENT: We would like to do that,
6 but we do not care to sit here for several minutes
7 waiting for Major Moore.

8 MR. KANZAKI: Then I ask that the witness
9 be stood down for the time being and I request per-
10 mission to pass on to my next witness for the time
11 being.

12 THE PRESIDENT: That is the course to follow.
13 The witness is stood down.

14 (Whereupon, the witness was excused.)

15 THE PRESIDENT: Please call your next witness.

16 MR. KANZAKI: I call as my next witness,
17 INUMA, Mamoru.

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1 M A M O R U I N U M A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. KANZAKI:

7 Q Please state your name and address.

8 A My name is INUMA, Mamoru. My address:
9 No. 3 Tsutsui-machi, 2-chome, Higashi-ku, Nagoya City.

10 MR. KANZAKI: May the witness be shown
11 defense document 1988?

12 Q Is that your affidavit and does it bear
13 your signature?

14 A Yes.

15 Q Are its contents true and correct?

16 A Yes.

17 MR. KANZAKI: I offer defense document 1988
18 in evidence.

19 THE PRESIDENT: Admitted on the usual
20 terms.

21 CLERK OF THE COURT: Defense document
22 No. 1988 will receive exhibit No. 3203.

23 (Whereupon, the document above
24 referred to was marked defense exhibit 3203
25 and received in evidence.)

1 MR. KANZAKI: I read court exhibit 3203. I
2 shall read from paragraph 3:

3 "3. I was Chief of the Personnel Affairs
4 Bureau in the War Ministry from November 1938 to
5 October 1939. In September 1939, I recommended
6 Major General MUTO as Chief of the Military Affairs
7 Bureau to General HATA who was then the War Minister,
8 as the proper person to be appointed to that position.
9 I made this recommendation in accordance with my
10 duties as Chief of the Personnel Affairs Bureau. It
11 is the duty of the Chief of the Personnel Affairs
12 Bureau to make recommendations to the War Minister
13 for the appointment of officers to the various posi-
14 tions in the army.

15 "I made this recommendation after Lt. General
16 MACHIJIRI, the outgoing Chief of the Military Affairs
17 Bureau had recommended General MUTO as his successor
18 and after I myself had fully considered the opinions
19 of the Military Affairs Bureau and the Personnel
20 Affairs Bureau. In accordance with the regular
21 military procedure in such matters, War Minister HATA
22 then submitted the name of Major General MUTO to the
23 Three Chiefs Council. Major General MUTO was then
24 designated to the position as Chief of the Military
25 Affairs Bureau by the Three Chiefs Council.

1 "General HATA always followed the regular
2 military procedure in all matters affecting the War
3 Ministry and he accepted my recommendation of General
4 MUTO without question and did his duty and submitted
5 his name to the Three Chiefs Conference. My recom-
6 mendation of Major General MUTO, General HATA's
7 acceptance of that recommendation, and his presenta-
8 tion of General MUTO to the Three Chiefs Conference,
9 and the acceptance by the Three Chiefs Conference of
10 the recommendation of General MUTO were all in accord-
11 ance with regular procedure in such matters in the
12 War Ministry."

13 MR. KANZAKI: Your witness.

14 THE PRESIDENT: Mr. Sutton.
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CROSS-EXAMINATION

BY MR. SUTTON:

Q Mr. Witness, was War Minister HATA required to follow your recommendation in selecting the Chief of the Military Affairs Bureau and the appointment thereto of MUTO?

A I have no knowledge of whether he was or was not in a position to accept my recommendation.

Q You do not know whether or not there was any obligation on him to follow your recommendation, is that correct?

A I do not know whether he had any obligation or not -- I do not know.

MR. SUTTON: That is all; we have no further questions.

THE INTERPRETER: "I do not know what you mean by whether he was under obligation or not," correction on the previous reply.

MR. SUTTON: May I ask the indulgence of the Tribunal. I misunderstood a request from my associate at the bar. I have three questions that I would like to ask the witness. I would like the privilege of asking them.

THE PRESIDENT: You may not have heard the whole of the witness' last answer, Mr. Sutton. Will

1 the interpreter repeat it, please?

2 (Whereupon, the last answer, as
3 corrected, was read by the official court
4 reporter.)

5 Q Was the War Minister required to follow the
6 recommendation which you made to him as to the selec-
7 tion of the Chief of the Military Affairs Bureau?

8 A No, I do not think he was necessarily required
9 to do so.

10 Q Was the Three Chiefs Conference required to
11 follow your recommendation?

12 A The same reply applies to this question
13 also. Insofar as there were no objections to the
14 recommendation of the Chief of the Personnel Affairs
15 Bureau the ordinary procedure was followed. Only
16 when objections were raised were other steps taken.

17 Q Either War Minister HATA or the Three Chiefs
18 Conference were at liberty to select whomever they
19 thought fit for the position, were they not?

20 A Yes, they had the liberty but with regard
21 to the circumstances, let me explain in more detail
22 so that you may understand better. First of all, the
23 Chief of the Personnel Affairs Bureau prepared a plan
24 and submitted it to other related organs in the General
25 Staff and the Inspectorate General of Military

1 Education to sound out their views.

2 The second step in the procedure is for
3 such people who are concerned with personnel matters
4 in these separate departments to report the plan or
5 recommendation to their chief and ask them for their
6 opinions and so long as there are no objections to
7 the plan as drafted and recommended the plan was
8 formally completed by the lower level, and inasmuch
9 as the three army chiefs are already familiar with
10 the plan before the official plan is submitted to
11 them, in so far as there are no special objections
12 to the plan as proposed, the plan is carried through.

13 Q I ask you again, did General HATA have
14 authority to recommend for appointment as Chief of
15 the Military Affairs Bureau some person other than the
16 person suggested by you? You may answer the question
17 yes or no.

18 A Yes, he was supposed to have the authority.

19 Q Was General HATA a member of the Three Chiefs
20 Council?

21 A Yes.

22 MR. SUTTON: That concludes the cross-
23 examination.

24 MR. KANZAKI: May the witness be released on
25 the usual terms?

1 THE PRESIDENT: He is released accordingly.

2 (Whereupon, the witness was excused.)

3 MR. KANZAKI: I call as my next witness
4 OIKAWA, Koshiro.

5 - - -

6 K O S H I R O O I K A W A, called as a witness on
7 behalf of the defense, being first duly sworn,
8 testified through Japanese interpreters as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. KANZAKI:

12 Q Please state your name and address.

13 A My name is OIKAWA, Koshiro; my address is
14 111 Kaminoge, Tamagawa, Setagaya-ku, Tokyo.

15 MR. KANZAKI: May the witness be shown
16 defense document 2605?

17 Q Is this your affidavit and does it bear your
18 signature?

19 A This is mine.

20 Q Are the contents thereof true and correct?

21 A True and correct.

22 MR. KANZAKI: I tender defense document
23 2605 in evidence.

24 THE PRESIDENT: Admitted on the usual terms.

25 CLERK OF THE COURT: Defense document No. 2605

1 will receive exhibit No. 3204.

2 (Whereupon, the document above
3 referred to was marked defense exhibit
4 No. 3204 and received in evidence.)

5 MR. KANZAKI: I now read exhibit 3204:

6 "I was the Navy Minister for the second and
7 third KONOE cabinets.

8 "In or about September 1941, Lieutenant
9 General USHIROGU, Chief of Staff of the China
10 Expeditionary Forces, called upon me at the Navy
11 Minister's office as a messenger dispatched from
12 General HATA, Shunroku, the Commander in Chief of
13 the China Expeditionary Forces, with the following
14 message from General HATA:

15 "'Recently, relations between America and
16 Japan have been deteriorating. America is opposed
17 to Japan's stationing her troops in China. I believe
18 that in order to avoid a clash with America, we must
19 withdraw all our troops from China. I heartily re-
20 quest you to do your utmost as Navy Minister to
21 prevent a conflict between America and Japan.'"

22 Your witness.

23 MR. SUTTON: There will be no cross-
24 examination, if the Court please.
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1 THE PRESIDENT: I have a question on behalf
2 of a Member of the Tribunal.

3 Was there any special reason known to the
4 witness why HATA sent a messenger to the Navy Minister
5 and not to the War Minister?

6 THE WITNESS: Probably this messenger went
7 to the War Ministry and then came to my ministry.
8 However, I have no positive knowledge of this.

9 THE PRESIDENT: That is the only reason you
10 can give?

11 Was the message in writing?

12 THE WITNESS: It was oral.

13 MR. KANZAKI: May the witness be released on
14 the usual terms?

15 THE PRESIDENT: He is released on the usual
16 terms.

17 (Whereupon, the witness was excused.)

18 MR. KANZAKI: Mr. Lazarus will continue with
19 the presentation of evidence.

20 THE PRESIDENT: Mr. Lazarus.

21 MR. LAZARUS: We next call SAWADA, Shigero.
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1 S H I G E R O S A W A D A, recalled as a witness on
2 behalf of the defense, having been previously
3 sworn, testified through Japanese interpreters
4 as follows:

5 THE PRESIDENT: You are still on your former
6 oath.

7 DIRECT EXAMINATION

8 BY MR. LAZARUS:

9 Q May document 2204 be shown the witness.

10 Is that your affidavit, Mr. Witness?

11 A Yes.

12 MR. LAZARUS: I offer in evidence defense
13 document 2204.

14 THE PRESIDENT: Mr. Sutton.

15 MR. SUTTON: May it please the Tribunal, the
16 prosecution objects to and moves to strike out the
17 following portions of the affidavit:

18 First, that portion which purports to give
19 the substance of a letter, near the middle of page 2.
20 This objection applies to the entire paragraph which
21 is indented, together with the six words which precede
22 the indented paragraph and the two sentences which
23 follow it. The letter is not produced, nor its absence
24 accounted for, and the witness seeks both to quote and
25 to explain the contents.

1 Second, the next to the last paragraph on
2 page 2 on the ground that it is argumentative and
3 gives the opinion of the witness as to what it was
4 natural for General HATA to do.

5 And lastly, the last three lines of the affi-
6 davit, which again refer to the contents of the letter.
7 The part objected to begins with the words, "and this
8 decision..."

9 We respectfully move the Tribunal to strike
10 these portions from the affidavit.

11 MR. LAZARUS: Mr. President.

12 THE PRESIDENT: Mr. Lazarus.

13 MR. LAZARUS: If the Tribunal please, in this
14 particular matter the entire defense of the accused
15 HATA, Shunroku, is based on whether or not a letter
16 was sent to him ordering him to resign as War Minister
17 in the YONAI Cabinet, and thus ending the life of that
18 cabinet. There is only one living person, so far as
19 I have been able to find out in a year and a half of
20 investigation of this matter, who knows about that
21 letter, and that is the witness in the box. He wrote
22 it under orders, he knows why the orders were given
23 to him to write it, he knows what the purport and
24 intent was, that it was intended to force HATA to resign
25 as minister in the YONAI Cabinet and thus smash that

1 cabinet; he knows whether or not, in short, that
2 letter was an order or was a request or left any dis-
3 cretion in the hands of the War Minister upon receipt
4 of that letter from his superior.

5 The Tribunal will note that we do not quote
6 the letter, but it says definitely he wrote a letter
7 which in substance stated as follows, and we do not
8 even have it in quotes because, truthfully, we could
9 not get quotes.

10 THE PRESIDENT: He cannot give the contents
11 of the letter even as he recollects them without
12 accounting for its absence, but he may be able to
13 account for the absence of both letters.

14 MR. LAZARUS: Perhaps I made a mistake, sir.
15 There was only one letter, Mr. President.

16 I will ask the witness a supplemental question
17 at the end of the reading to ask him to account.

18 THE PRESIDENT: As you come to that part of
19 the affidavit, just question him about the letter
20 and what happened to it, without stating its contents.

21 MR. LAZARUS: Yes, sir.

22 THE PRESIDENT: It is admitted on the usual
23 terms.

24 CLERK OF THE COURT: Defense document No. 2204
25 will receive exhibit No. 3205.

1 (Whereupon, the document above
2 referred to was marked defense exhibit
3 No. 3205 and received in evidence.)

4 MR. LAZARUS: (Reading) "From October 1939
5 to November 1940, I was Vice-Chief of the General
6 Staff. The Chief of the General Staff during this time
7 was H.I.H. Prince KANIN.

8 "In 1940, because of Germany's extraordinary
9 victories in Europe, her fame spread through all of
10 Japan and soon the view became predominant in army
11 circles that Japan should use Germany's power and
12 influence to bring the China Incident to a favorable
13 solution. The army was desirous of peace with China
14 and so was War Minister General HATA. He always in-
15 sisted that it was most urgent to bring an end to the
16 China Incident. The question was, how was the incident
17 to be settled. It was HATA's contention that the
18 best way to secure peace with China was to reduce the
19 strength of the Japanese troops in China. As his first
20 step in this direction, he sought to decrease, in draw-
21 ing up the army budget for the year 1940, the number
22 of Japanese troops in China from 900,000 to 500,000.
23 The General Staff was completely opposed to such an
24 amount of reduction and said it was impossible. The
25 matter was then taken up and discussed between the

1 War Minister and the General Staff and eventually the
2 number of troops was decreased to between 600,000 and
3 650,000.

4 "Towards the end of June 1940, while I was
5 in China for inspection of the operations, I was called
6 back to Tokyo by an urgent telegram. I returned to
7 find that the cabinet, contrary to the general desire
8 of the army, was against entering into any close con-
9 nections with Germany and that its policy was running
10 contrary to the prevailing opinion of the army. It
11 was the ardent desire of Prince KANIN, Chief of the
12 General Staff, to attain a solution of the incident
13 through use of Germany and it was about the beginning
14 of July 1940 that he told me that he intended to
15 accelerate peace with China through the mediations of
16 Germany and that he intended to use the War Minister
17 to break the deadlock between the army and the cabinet.
18 So, he ordered me to consult with the officials in the
19 War Ministry, with these ends in view. Accordingly,
20 I called on the Vice-Minister of War, Lt. General
21 ANAMI, and we discussed the matter between the two of
22 us. The Vice-Minister said finally that as long as
23 the Chief of Staff did not modify his view of using
24 Germany to accelerate peace with China, there was no
25 alternative but to change the present cabinet; that

1 in view of the character of the present cabinet, it
2 was impossible to comply with the Chief of Staff's
3 objective even if some changes were made among its
4 members. When I asked the Vice-Minister if that was
5 also the opinion of the War Minister, he informed me
6 that that was not the opinion of General HATA, but it
7 was the opinion of the Vice-Minister and the men below
8 him in the War Ministry. I pointed out that the matter
9 was of extreme importance as the opinion of the army
10 in general and that of the cabinet were in opposition
11 to each other and that we had better meet again after
12 I had once more consulted with the Chief of the General
13 Staff and then I parted with him.

14 "The Chief of General Staff, having heard my
15 report stated that since his opinion represented that
16 of the majority of the army and that since according
17 to the Vice-Minister there was no other way but a
18 change of cabinet, we must do our utmost to follow that
19 method and that he was truly sorry for the War Minister
20 that such an extreme measure had to be taken, but one
21 must bear this for the good of the country in such a
22 vital national affair. I again called on the Vice-
23 Minister, stated the decision of the Chief of the
24 General Staff and learned that ANAMI had not changed
25 his views since our previous meeting. Some days later

SAWADA

DIRECT

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1 by the orders of Prince KANIN, I wrote a letter which
2 in substance stated as follows."
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1 THE PRESIDENT: Now, what was the letter?

2 BY MR. LAZARUS:

3 Q General SAWADA, will you please tell the
4 Tribunal what became of the letter you state you
5 delivered to General HATA?

6 A I delivered this letter to War Minister
7 HATA at the War Minister's official residence. I
8 do not know what became of the letter after that.

9 THE PRESIDENT: Well, General HATA may
10 know if he goes into the box. He is the person
11 who primarily should account for it, but this wit-
12 ness may have discovered from him what happened to
13 it. I do not know. We have been admitting hearsay.

14 Q Did you at any time later find out what
15 happened to this letter or hear of any trace of it,
16 General?

17 A I have heard nothing.

18 THE PRESIDENT: Apparently, he didn't try
19 to get it; so he is not properly accounting for its
20 absence.

21 MR. LAZARUS: The rule as to documents, Mr.
22 President, has been in existence for a long time, and
23 we recognize it. However, sir, here is a situation
24 where if a technical rule were to be strictly applied
25 the entire case of one accused will fail of proof

1 because we have no other way of presenting it other
2 than by way of the one living witness who has seen
3 that letter.

4 THE PRESIDENT: The name "HATA" appears on
5 your proof of documents.

6 MR. LAZARUS: Before I was going to go any
7 further, Mr. President, I was going to tell you that
8 I am not sure whether General HATA will, on the advice
9 of counsel, take the stand. We have not prepared
10 an affidavit. If he does take the stand it will be
11 only for examination by the prosecution or by the
12 Tribunal. There will be no affidavit.

13 THE PRESIDENT: That rule was laid down or
14 was followed after much consideration by the Members
15 of the Tribunal in conference, and no departure is
16 likely.

17 MR. LAZARUS: In view of the special circum-
18 stances of this case and the all-important character
19 of this letter, I respectfully submit to the Tribunal
20 that it ought to reconsider that rule just for this
21 one incident, Mr. President. I feel that it is so
22 important that perhaps I would not be considered
23 impudent if I ask the Tribunal to consider this one
24 case in and of itself.
25

THE PRESIDENT: We have no favorites among

1 the accused. What is good enough for one is good
2 enough for another. When we laid down that rule
3 we gave you the reason, and it is a substantial
4 reason and still obtains, even in HATA's case.

5 MR. LAZARUS: I do not ask, Mr. President,
6 that HATA be made a favorite. I ask that in the
7 interest of justice and in the interest of a fair
8 trial, and in view of the special circumstances in
9 this case that that rule not be followed as strictly
10 as heretofore. I know I have searched and my asso-
11 ciates have searched a year and a half to try to find
12 it in the War Ministry and at other places, and it
13 just cannot be found. But here is the one witness
14 that knows it, knows the purpose for which it was
15 ordered, and knows in fact that it was delivered.

16 THE PRESIDENT: By a majority the Court has
17 decided to insist on the application of the rule to
18 this case.

19 MR. LAZARUS: Then I will continue after
20 the reference to the letter, Mr. President.

21 THE PRESIDENT: Yes, Mr. Lazarus.

22 MR. LAZARUS: Would it be permissible then,
23 Mr. President, to begin with this last paragraph on
24 the second page?

25 THE PRESIDENT: You will begin to read from

"The letter was sealed and signed . . ."

MR. LAZARUS: Yes, sir.

1 THE PRESIDENT: This much has not been ob-
2 jected to: "Some days later by the orders of Prince
3 KANIN, I wrote a letter . . ." Then you will proceed:
4 "The letter was sealed and signed by Prince KANIN . . ."

5 MR. LAZARUS (Reading): "The letter was
6 sealed and signed by Prince KANIN and he ordered me to
7 deliver it to War Minister HATA. I did so. In this
8 way, General HATA received the letter and I am not
9 quite sure but it might be the following day or the
10 day after that General HATA submitted his resigna-
11 tion, and then the YONAI Cabinet resigned en bloc.
12

13 "H. I. H. Prince KANIN, besides being the
14 Chief of the General Staff, was a member of the
15 Emperor's Household and a Father of the Army, in
16 age, rank, experience, etc., and it was quite natural
17 that General HATA, although War Minister, nevertheless,
18 as a loyal subject of the Emperor, was compelled to
19 obey his strong demand.

20 "From the beginning, the YONAI Cabinet had
21 been a conservative one and it was opposed to the idea
22 of cooperation and ties with Germany and to the use
23 of Germany in the settlement of the China Incident.
24 Hence, a majority of the army branded the YONAI
25

1 Cabinet as too weak to settle the China Incident
2 and as lacking in ability to settle the general
3 situation."

4 THE PRESIDENT: Now, the next sentence was
5 objected to.

6 MR. LAZARUS: Beginning with "The intention,"
7 sir?

8 THE PRESIDENT: Yes, I understood it was
9 objected to. I may be wrong.

10 MR. SUTTON: I think, if the Tribunal please,
11 objection was to next to the last paragraph on page 2,
12 and to the last portion of the affidavit beginning
13 with the words, "and this decision," continuing to the
14 end of the affidavit.

15 THE PRESIDENT: Read on, Mr. Lazarus.

16 MR. LAZARUS: Thank you. "The intention
17 of overthrowing the YONAI Cabinet and the plan to
18 effect peace by using Germany was predominant in the
19 army. Besides, War Minister HATA was one of the sup-
20 porters of the YONAI Cabinet policy. Hence, the
21 consensus of opinion in military circles was that
22 HATA was not useful in accelerating the attempts
23 at closer ties with Germany and the subsequent use of
24 the power of Germany to effect peace with China and
25 that he lacked the desire to do so and a change in

1 War Ministers was being strongly urged. Indeed,
2 this consensus of opinion of military circles was
3 reflected in the decision of the Chief of the General
4 Staff and this decision" --

5 THE PRESIDENT: You will stop there.

6 MR. LAZARUS: Yes, sir.

7 Now, sir, in view of the fact that we do
8 not take any quotes or even the substance of the
9 letter, and in view of the fact that the Tribunal has
10 already allowed us to say the letter was sealed, signed
11 and delivered, I respectfully submit that there is no
12 violation of the rule against documents if the last
13 one and one-half lines were to be read in this sen-
14 tence, sir.

15 THE PRESIDENT: To admit that would be to
16 admit part of the contents of the letter, at least
17 part, and the whole of the contents is excluded,
18 not merely part.

19 MR. LAZARUS: Well, then, may I read from
20 "and" until the word "HATA" without referring to the
21 rest of it, sir?

22 THE PRESIDENT: No, because you have agreed
23 it was conveyed by letter, and you must produce the
24 letter.
25

MR. LAZARUS: There will be a few questions

by Mr. Cole.

1 THE PRESIDENT: Well, it is almost four
2 o'clock.

3 We will adjourn until half-past nine tomorrow
4 morning.

5 (Whereupon, at 1600, an adjourn-
6 ment was taken until Tuesday, 23 September
7 1947, at 0930.)
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